

Exhibit A

Transcript

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
ZOHAR III, CORP., et al., Case No. 18-10512 (KBO)
Courtroom No. 6
824 North Market Street
Wilmington, Delaware 19801
Debtors. October 21, 2019
2:00 P.M.

TRANSCRIPT OF TELEPHONIC STATUS CONFERENCE
BEFORE THE HONORABLE KAREN B. OWENS
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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1 (Proceedings commenced at 2:14 p.m.)

2 (Call to order of the court)

3 THE COURT: Good afternoon, counsel. This is
4 Judge Owens. I understand the parties are on the line and
5 we're here to discuss scheduling of the Zohar debtor's motion
6 to transfer the Dura bankruptcy cases.

7 I'd like to hear from counsel to the Zohar debtors
8 first.

9 Counsel to Zohar?

10 THE CLERK: Operator?

11 OPERATOR: Yes. We are connected and lines are
12 live.

13 THE CLERK: Just make sure everyone is live.

14 THE COURT: Is anyone on the line from Young
15 Conaway?

16 MR. PETRICK: Your Honor, this is Greg Petrick.
17 Joe Barry was on shortly before. I don't know what happened
18 to him, but he should be on.

19 OPERATOR: I am still showing his line is
20 connected and it is live. He may want to check his mute
21 function.

22 MR. LOHAN: Your Honor, this is Brian Lohan. Mr.
23 Barry believes CourtCall dropped and he is reconnecting right
24 now.

25 THE COURT: Okay. Let's pause a few moments. I

1 do want to hear from the Zohar debtors first.

2 (Pause)

3 OPERATOR: Mr. Barry is reconnected, Your Honor.

4 THE COURT: Okay. Mr. Barry, are you on the line?

5 MR. BARRY: Judge Owens, I am. I apologize. I
6 got dropped by CourtCall. I do apologize for the
7 inconvenience. I guess I'm not starting my first appearance
8 before you on the right foot. So, I do apologize.

9 THE COURT: No problem. We thought it was on our
10 end.

11 So, we have not begun the hearing. We were
12 waiting for you. I'd like to hear from the Zohar debtors on
13 scheduling of the venue motion.

14 MR. BARRY: Thank you, Your Honor. I'd like to
15 give Your Honor an update as to what's happened over the last
16 couple of days to kind of frame that up. Before I do, there
17 is a couple of issues that will really frame-up with how we
18 proceed with the venue issue because this doesn't just -- the
19 request to transfer venue under 1014 doesn't just implicate
20 the first filing or the affiliate rules under venue. There
21 are two or three other issues that we think are implicated
22 and are critical to how we schedule this and how it gets
23 framed.

24 The first is Zohar is secured term loan lenders to
25 Dura. We are the biggest creditors in those cases and I

1 think that -- I don't think that's disputed by the parties.
2 As such we think that Your Honor has exclusive in rem
3 jurisdiction over Zohar's liens and the claims under the
4 governing documents. So, we think that's going to be an
5 important factor between what happened last week, what
6 happens today and what happens in the near term.

7 The other issue is we now know that in the Dura
8 bankruptcy case, and you will hear more about this, I think,
9 in a minute and probably throughout the course of this
10 telephonic status conference that Ms. Tilton and her Ark
11 entity are proposing to fund Dura's DIP and to buy Dura
12 through a sale process in that case, but that was done
13 without any consult with the Zohar's.

14 As Your Honor is aware, we are currently the
15 Zohar's, and Ms. Tilton and all are currently subject to a
16 court approved monetization process that defines a
17 monetization event as a sale or a refinancing which the sale
18 in the Dura cases would qualify as both.

19 Then the third, Your Honor, is that Judge
20 Mashburn, in Tennessee, at the first day hearing on Friday
21 asked that the parties, all of the parties, talk to you today
22 about the extent of his ability to grant relief in the
23 Tennessee case in light of Your Honor's order granting our
24 emergency motion.

25 So, Your Honor, with all these things in mind I'd

1 like to just launch into, sort of, what happened over the
2 last few days.

3 After Your Honor entered the emergency order on
4 Thursday of last week the Zohar's filed that order in the
5 Tennessee case so Judge Mashburn was on notice of it and had
6 the benefit of your ruling. Thereafter, Dura rolled out its
7 first day throughout the course of the day and Judge Mashburn
8 set a hearing for 10:30 on Friday and issued what was,
9 essentially, an order to show cause as to why the debtors
10 hadn't fully filed all their first day motions without
11 requesting the hearing without having all their first day
12 motions on file.

13 So, the DIP motion got filed around two o'clock
14 Tennessee time and at that point it was confirmed that the
15 DIP was coming from Ms. Tilton. Again, Your Honor, just the
16 cap structure of Dura, Ms. Tilton holds the ABL in the amount
17 of about \$26.7 million dollars. And the Zohar's hold the
18 term loan debt in the amount of about \$105 million dollars.
19 So, again, we're by far the largest creditor in the Dura
20 case.

21 Some important features of the DIP were \$50
22 million dollars of new money plus a roll-up of the Tilton
23 held ABL, twenty of which was going to be rolled up on the
24 first day. Non-consensual priming of the Zohar's as to the
25 term loan collateral released by Dura, Tilton and her

1 affiliated entities payment of various unquantified fees and
2 expenses to Ms. Tilton, a good faith finding, and the
3 financing was conditioned on Ms. Tilton or one of her
4 entities being designated as the stalking horse, and any bid
5 protections approved by her in her sole and absolute
6 discretion.

7 So, again, you know, our initial concerns with
8 this were Your Honor's jurisdiction under 1334(e) since this
9 was clearly going to be a non-consensual priming situation,
10 and financing and proposed sale absent consent or
11 consultation with the Zohar's violates the monetization
12 protocol in our case.

13 Judge Mashburn opened the hearing expressing
14 concern about your order and the extent to which he could
15 enter any relief at all including, you know, procedurally
16 joint administration and the like. We, I and Mr. Lohan on
17 behalf of Barton Hill, advised the court, you know, that we
18 weren't there to prevent any necessary relief. We were
19 supportive of the restructuring efforts. We weren't there
20 to, you know, essentially burn the house down and we weren't
21 going to stand in the way of critical operational relief to
22 the extent Judge Mashburn was comfortable entering it.

23 We did remind Judge Mashburn that we believe under
24 1334(e) he could not prime us. He also raised to the extent
25 to which the automatic stay could apply. We advised him

1 again that the proposed sale process violated the
2 monetization process in the Zohar cases.

3 The court -- Judge Mashburn allowed the parties
4 multiple breaks to see if we could, you know, resolve the DIP
5 in a mutually satisfactory way. At several points Barton
6 Hill stepped up and offered to provide an alternative DIP of
7 \$5 to \$10 million dollars without the over-reaching
8 protections Ms. Tilton was demanding, and offered to do it on
9 a five-page order and not priming Tilton at all. Ms. Tilton
10 and the debtors would not agree.

11 Judge Mashburn's view at that point, Your Honor,
12 was that he simply couldn't force Dura to borrower on a DIP
13 that they didn't want. So, we had quite a show-down in
14 Tennessee that lasted all day. We had Your Honor's order
15 limiting what Judge Mashburn could do. We had the
16 jurisdictional constraint under, among others, 1334. We had
17 the fact that Tilton's proposed sale financing violated the
18 settlement agreement in the monetization protocol in
19 Delaware, but we also had, you know, a company that was
20 desperate for financing and by all accounts wouldn't have
21 survived the weekend without some accommodation.

22 So, throughout the day Judge Mashburn expressed
23 things like it appeared people were playing a game of
24 chicken. After probably six or so hours of negotiation Judge
25 Mashburn expressed a significant concern that Ms. Tilton was

1 holding up the process unless or until she was designated as
2 the stalking horse bidder. And ultimately, at the end of the
3 day, Ms. Tilton modified the demands placed in the interim
4 DIP from Friday till Wednesday of this week, and she deferred
5 her request for the roll-up and she deferred her request to
6 be named as a stalking horse as a condition to the financing.
7 The debtor reduced its interim funding request to \$10 million
8 dollars. And we advised Judge Mashburn, given the
9 criticality of having funding for Dura, we wouldn't stand in
10 the way, but nonetheless reserved all of our rights and
11 continued to voice our ongoing concerns.

12 So, when I say defer that means that Judge
13 Mashburn has now scheduled the hearing for Wednesday in
14 Tennessee where the totality of the funding request from Ms.
15 Tilton will be heard on a second interim basis including the
16 requirement that she be designated as the stalking horse and
17 that the interim roll-up occur on Wednesday.

18 So, as I mentioned earlier, Your Honor, Judge
19 Mashburn closed the hearing by asking us to seek clarity from
20 you on what he can and cannot do under your emergency. We
21 think that we would hopefully be able to cover that with you
22 today. We also think, again, there are other limitations
23 beyond your order including 1334 and the monetization
24 process.

25 So, that takes us through Friday and the weekend,

1 Your Honor. Barton Hill has been working pretty tirelessly
2 on an alternative DIP that would, as I understand it, what
3 they're working on, take out Ms. Tilton's ABL and offer the
4 debtor the same level of financing being offered under the
5 current debt facility. They're currently working on getting
6 diligence from Dura and the hope would be that Barton Hill
7 emerges prior to Wednesday with an alternative financing
8 package to take out Ms. Tilton. There likely won't have a
9 lot of the case control measures that we have in the existing
10 DIP facility.

11 If not, and here's, I think, where the rubber
12 meets the road, we're going to have another show-down in
13 Tennessee on Wednesday. If Ms. Tilton is moving forward with
14 the roll-up, the good faith findings, the designated stalking
15 horse requirements, the release that's in the DIP, all of
16 which, again, we think are constraining under both
17 statutorily and under the court order here in Delaware.

18 So, we did have our meet and confer yesterday with
19 Dura, as you had requested. We asked, if it's possible, to
20 defer Wednesday's hearing, but we were told that the debtor,
21 being Dura, needs additional borrowing to get passed
22 Wednesday. We have to see if Ms. Tilton would agree to fund
23 beyond Wednesday on the same terms that Judge Mashburn
24 approved on Friday, and we don't know the answer to that, so
25 that you could have more time to adjudicate the venue issue.

1 So, we think, Your Honor, currently it seems we're
2 hurling forward towards a contested DIP hearing in Nashville
3 on Wednesday. That's going to put Judge Mashburn, once
4 again, in an untenable position because we think the Zohar's
5 are going to have to object to the DIP, but we understand
6 that Dura needs financing.

7 So, unless we have either an agreement from Ms.
8 Tilton to either fund beyond Wednesday on the same terms that
9 were approved Friday or on agreement to further defer some of
10 these bells and whistles in her DIP. One of those two, in
11 our view, I think, unless one of those two happens the only
12 thing that we see being -- you know, the result is we think
13 we're going to have to ask you to try to adjudicate the venue
14 issues on or before Wednesday; otherwise, we're going to have
15 this showdown where Judge Mashburn is limited on what he can
16 do.

17 The DIP lender is unwilling to give up, at least,
18 until we resolve the venue issue, the various case
19 controlling demands that she's put in the DIP facility. And
20 the debtors are being put in a position of, you know, giving
21 in on matters that could forever prejudice in our bankruptcy
22 case here in Delaware or stand in the way of funding, you
23 know, a desperate company that we have a significant stake
24 in.

25 So, you know, our request, Your Honor, would be,

1 you know, if at all possible, we would like to try to get an
2 adjudication of the venue issue as soon as possible and if
3 that could happen on or before Wednesday that would be our
4 ask unless Ms. Tilton is willing to defer the various case
5 control requirements in her DIP or to further lend under the
6 existing interim order that Judge Mashburn approved on
7 Friday.

8 THE COURT: And, I'm sorry, can you clarify, I
9 wasn't following, the designated stalking horse requirement?
10 So, in the DIP in Tennessee is it a milestone, sort of, term
11 or is it part of the DIP order, Ms. Tilton or her entities
12 would be designated as the stalking horse.

13 MR. BARRY: Ms. Tilton has sole discretion over
14 the approval of the bidding procedures including designating
15 herself as the stalking horse bidder.

16 THE COURT: Within the DIP order. So, Judge
17 Mashburn would be deciding that issue on Wednesday.

18 MR. BARRY: Correct.

19 MR. MEISLER: Your Honor, Ron Meisler of Skadden
20 Arps on behalf of the funds affiliated with Ms. Tilton that
21 are providing the DIP loans.

22 Mr. Barry has it wrong, Your Honor. You had it
23 right. It's a milestone. So, Mr. Barry did have it right
24 that we have currently sole discretion rights and we're
25 working with the debtors. They've also asked us to open the

1 sole discretion to just reasonable acceptance; we're working
2 on that.

3 The termination rights or the events of default
4 would not trigger from now until the bid procedures hearing
5 so long as the debtors did file bid procedures motion. That
6 in and of itself is also a milestone that would be, not now,
7 but at Wednesday's hearing. The only milestone that would be
8 up between now and November 12th, which is the proposed bid
9 procedures hearing, is just the debtors filing bid procedures
10 motions.

11 THE COURT: So, I haven't seen any of the
12 paperwork that's been filed in Tennessee. So, I want to be
13 crystal clear as to what he is approving in connection with
14 the DIP. I'm sorry if I am just not quick on the uptake
15 here. So, in connection with the DIP motion Judge Mashburn
16 would be approving milestones only that the bid procedures
17 motions need to be filed or is he approving in addition to
18 those milestones that Ms. Tilton, as a condition of the DIP
19 would have sole authority to direct the -- to approve the bid
20 procedures and to, I guess -- well, it sounds like she would
21 not be designated as a stalking horse on Wednesday. So, I
22 want complete clarity as to what he will be seeking because I
23 am not following what is going on right now in connection
24 with those points.

25 MR. BARRY: Your Honor, this is Joe Barry.

1 The term sheet that is attached to the DIP motion
2 provides that the proceeds of the new money DIP loans and the
3 cash collateral are available subject to in pursuit of what
4 is defined as an acceptable 363 sale. And acceptable 363
5 sales is defined as the DIP administrative agent, i.e. Ms.
6 Tilton, shall have reviewed and approved in writing and have
7 sole and absolute discretion any bid procedures and stalking
8 horse asset purchase agreement.

9 And it's our understanding that Ms. Tilton has
10 designated or intends to designate herself or one of her
11 entities as the stalking horse bidder. So, as I read this
12 the condition to the new money financing is the pursuit of a
13 sale process that's in Ms. Tilton's sole and absolute
14 discretion which includes the designation of her as the
15 stalking horse.

16 THE COURT: Okay. So, if that wasn't approved it
17 would be an event of default?

18 MS. MEISLER: Your Honor, this is Ron Meisler of
19 Skadden Arps on behalf of the proposed DIP lender in the Dura
20 bankruptcy.

21 THE COURT: Thank you.

22 MR. MEISLER: Right now, for the \$10 million
23 dollars that's been put in, there is no conditioning to any
24 sort of stalking horse or any sort of sale process. We
25 agreed to that on Friday. When this goes forward on

1 Wednesday, yes, we are asking for certain rights with respect
2 to pushing the process forward. And inclusive of pushing the
3 process forward is moving forward with the stalking horse
4 proposal that we're negotiating with the debtors.

5 Your Honor, it's very important to understand that
6 as part of our proposal, as part of our sale proposal we're
7 assuming all the trade, we're assuming all the employee
8 obligations. And so, we believe that we're not only setting
9 a floor for the process, but we're giving a lot of comfort to
10 critical stakeholders to make sure that the company hangs
11 together.

12 So, yes, it's true that we are asking and
13 requiring the debtors, as a condition to funding if we make
14 it to the next draw that they push forward on the bid
15 procedures. And it's true that we have currently in our term
16 sheet, still to be negotiated because those terms are not
17 applicable right now, but we have terms that give us sole
18 consent rights on what the bid procedures look like and,
19 obviously, we have sole consent rights on what the purchase
20 agreement looks like because we got to agree to it with the
21 debtors. And for that matter the debtors had sole discretion
22 rights to.

23 Between the moment in time that the debtors filed
24 the bid procedures motion, until we're back in front of Judge
25 Mashburn on November 12th the debtors, as would be the case

1 in any forum, they are not obligated on the purchase
2 agreement. They are not obligated on the bid procedures.
3 And there is no hair trigger that we could trip the DIP
4 between Wednesday's hearing, assuming that the debtors get
5 what they asked for, and November 12th other than just
6 continuing to push forward.

7 If the debtors get a better offer, a higher and
8 better offer in the interim then I'm sure we're going to be
9 negotiating, and that party who provides that higher and
10 better offer they will presumably also provide a competing
11 DIP on better terms.

12 THE COURT: So, Mr. Meisler, the bid procedures --

13 MR. MEISLER: I'm sorry, Your Honor.

14 THE COURT: -- hearing is going to be proposed to
15 be heard on November 12th?

16 MR. MEISLER: Correct, Your Honor.

17 THE COURT: Okay. Thank you.

18 MR. MEISLER: And, Your Honor, while Skadden, and
19 myself, and my colleagues we have not been before Your Honor
20 in connection with the settlement agreement. Your Honor, I
21 do want you to take comfort that we looked at that settlement
22 agreement, we studied that settlement agreement. And in
23 Paragraph 20, specifically, it makes it clear that a
24 financing, after the expiration of the fifteen months window,
25 is permissible because, in face, even during the fifteen-

1 month window Ms. Tilton was permitted to provide financing,
2 but it was subject to first consulting with the CRO, not
3 consent, consulting.

4 Now that the fifteen month window has expired Ms.
5 Tilton has her right and she can use one of her funds, it's
6 not Ms. Tilton giving the loan, but it's one of the funds
7 that's providing the loan, and it's clear in the settlement
8 agreement that Ms. Tilton can act in the best interest of the
9 portfolio companies as can the Zohar with respect to the
10 Zohar funds.

11 It is also clear that upon the expiration of the
12 fifteen-month window Paragraph 25, all parties to the Chapter
13 11 cases referring to Zohar shall have and may exercise any
14 and all rights available under applicable law. Your Honor,
15 from our -- what we did in proposing the DIP and doing what
16 we need to do to protect the value of Dura was straight down
17 the middle permissible by the settlement agreement. We,
18 otherwise, wouldn't have proposed it.

19 Thank you, Your Honor.

20 THE COURT: I understand. I make no comment as to
21 the basis by which the proposed DIP lender for Dura has made
22 those proposals, but I appreciate your explanation of the
23 settlement agreement.

24 Okay. I'd like to hear from the Dura debtors in
25 connection with scheduling the venue transfer motion.

1 MR. BENNETT: Yes, Your Honor; it's Ryan Bennett
2 of Kirkland & Ellis on behalf of the Dura debtors. I haven't
3 had the privilege to appear before you before and thank you
4 for granting the *pro hac* today.

5 THE COURT: You're welcome.

6 MR. BENNETT: Your Honor, Mr. Barry said a number
7 of things today and also in the venue motion that they filed.
8 I just would like, if I could, the brief opportunity to step
9 back and give the court some context as it relates to the
10 company's, you know, decision to file where and the need to
11 re-empower the national court so that we can get the relief
12 that, you know, the company, the operating company needs
13 while venue determination is pending.

14 I think one of the things we wanted to address to
15 the court as an initial matter is that as to venue the
16 company, its advisors, its independent directors we all
17 greatly respect Delaware, you know, the bench, the bar.
18 Prior to Dura I personally filed my last three cases in
19 Delaware and they all went wonderfully.

20 In this case, for the Dura debtors we have
21 independent directors who are very experienced in a fiduciary
22 capacity who exercise their business judgment, filed in the
23 District of Tennessee. Not to avoid Delaware, but to
24 distance the operating companies from the various Zohar
25 disputes that have caused the company a lot of turmoil.

1 Instead, to be closer to the company's substantial
2 operations, employees, customers and vendors that are in
3 Tennessee.

4 You know, leading up to our bankruptcy, Dura's
5 bankruptcy, you know, our financial position suffered on a
6 number of fronts due to this Zohar over-hang. Our customers
7 placed us on no bid status. Our vendors contracted our trade
8 terms. We lost credit insurance. You know, there is just a
9 general cloud over the whole company. It put our operations
10 in real peril. It also had a fight and an agreement that,
11 you know, we're not a party to.

12 So, that limited our ability to effect adequate
13 restructuring transactions. So, in light of that the
14 independent directors chose to file in Tennessee, you know,
15 to really distance ourselves from the Zohar over-hang and to
16 put ourselves, really, in proximity with that which we wanted
17 to realize value from, the operations of the business, our
18 customer relationships.

19 I mean we have two out of our five U.S.
20 manufacturing facilities are in Tennessee. Over 300 of our
21 800 U.S. employees are in Tennessee. We've got over twenty
22 different OEM manufacturing facilities that we service in
23 Tennessee and over 400 Tennessee based vendors that provide
24 us with raw materials and other goods in that community.
25 Conversely, you know, we have no facilities in Delaware with

1 no employees, no customers. All we have is this damaging
2 overhang that, you know, we're trying to get away from.

3 So, you know, our view, Judge, is under the
4 supervision of the Tennessee Bankruptcy Court and, you know,
5 the direction of these two independent directors I mentioned
6 that we would seek to maximize value in that context through
7 what, you know, should be an undisputed orally and
8 transparent sale process in bankruptcy court. I'm not sure
9 any of the folks on the other side pushing for venue transfer
10 would disagree with that notion. It's just an issue of
11 where.

12 And for the reasons I said, I think that the
13 company has decided it would be better served and value
14 better maximized in that location. Then, however, the sale
15 panned out, right -- again, very equipped, experienced
16 bankruptcy judges would supervise that. However, the sale
17 panned out, what kind of proceeds were obtained through that
18 process would then flow-up to whomever is entitled to those
19 proceeds, right, on the waterfall, their lender or their
20 equity holder.

21 So, with that, like I said, we didn't have a lot
22 of out-of-court options in light of the overhang, but we were
23 able to obtain the Patriarch DIP which helped stabilize very
24 necessary operational needs including simple things like
25 simple, but extremely important things like employee payroll

1 and customer commitments that we, otherwise, would not have
2 the liquidity for.

3 Then, you know, that came with it, as has been
4 discussed, a stalking horse bid, but rather than view that as
5 some kind of burden, right, it actually is a benefit to the
6 company and its how the independent directors looked at it.
7 Here, we have a scenario where we can communicate to our
8 customers who are sensitive and concerned about Dura's
9 future. Our employees, likewise, and the vendors we've been
10 relying upon. We can communicate that there is a well-
11 equipped operator, experienced operator that can take the
12 company and manage their contracts, and administer their jobs
13 and the future of the company.

14 So, that's a big message, a valuable message. As
15 Mr. Meisler pointed out, I mean this proposed stalking horse
16 does propose to take out, to assume all the trade obligations
17 or, substantially, all the trade obligations. That is a big
18 message that really results in a lot of stability for our
19 company. You know, we're not like the Zohar debtors. We're
20 not just a financial tool or a fund. We actually have a
21 tremendous amount of operational sensitivity points on the
22 labor front, the supply front and the production front that
23 we have to keep in mind and the, kind of, messaging that we
24 can deliver with that stalking horse proposal is exactly what
25 we need independent directors to turn and was the right

1 course.

2 Mr. Meisler pointed out earlier, you know, it is
3 just right now seeking approval of a stalking horse and the
4 company could decide, consistent with its fiduciary
5 obligations, to pursue a different path, pursue a different
6 lender, pursue a different purchaser and have that
7 flexibility in bankruptcy. So, if the Barton Hill creditors
8 want to mature their proposal in a way that provides the Dura
9 debtors with the same level of comfort and certainty that the
10 Patriarch currently does then we'll have the ability to
11 pursue that, right, without putting the company in peril by,
12 you know, playing the game of chicken as Judge Mashburn
13 mentioned last week.

14 So, you know, on the venue front, and we filed a
15 paper this morning. You can see some of our issues in
16 addition to the proximity to the creditors, and customers and
17 if it all goes toward the venue argument which we will
18 eventually brief. It was also predicate issues of whether
19 we're even subject to Rule 1014 on account of an affiliate
20 status. And, you know, there's, obviously, if Your Honor is
21 aware, a big dispute about the ownership of the beneficial
22 and controlled security. The non-debtor that sits above us,
23 Dura buyer. That is its own substantive litigation to figure
24 out who owns what and could be an affiliate. Likewise,
25 there's a stipulation in the term loan agreement with the

1 Zohar's where they recognize that we're not an affiliate.
2 So, the point being that's its own, kind of, drawn out
3 process to even see whether 1014 applies.

4 THE COURT: But, Mr. Bennet, that's where we are.
5 So, we have a pending Dura bankruptcy case that may or may
6 not be an affiliate. And I am faced and have in my
7 possession a venue transfer motion under 1014(b). So, we
8 need to go ahead and we're going to have to schedule a venue
9 motion, and it sounds like the predicate issue is going to be
10 ownership. It's going to be, perhaps, an answer to the
11 question that has been in the ethers for eighteen months
12 which are these portfolio company's affiliates of Zohar
13 funds. And he issues that were disputed outside of
14 bankruptcy court before the Zohar funds landed in Delaware
15 Bankruptcy Court before my appointment. It sounds like some
16 of those may come to fruition.

17 So, I guess what I need to hear from the parties
18 and it sounds like after reading your submission is that you
19 would just like to schedule the venue motion on regular
20 notice. So, we would be looking sometime around November,
21 beginning of November, is that correct?

22 MR. BENNETT: That's correct, Judge. We don't see
23 the urgency here, right. I mean we have, like I said, an
24 equipped bankruptcy judge in Tennessee and if he is re-
25 empowered to hear our request for relief down there that, you

1 know, we can continue to proceed as debtors-in-possession.
2 You know, again, the operating company point, I mean there is
3 a lot of sensitivities when you're an operating company and
4 you have all -- as Your Honor is aware if you have all these
5 different commercial components to the company that we need
6 to look out for and we need to have a bankruptcy judge that's
7 empowered to provide us with that relief and not feel, in his
8 own words, enjoined in that context.

9 So, while we're proceeding forward on an orderly
10 schedule for a venue determination we can go do things like
11 go down to the bankruptcy court this week and seek debtor-in-
12 possession financing whether that's staying on course with
13 the Patriarch course approach or altering and going with
14 Barton Hill because they have been able to put something
15 together.

16 In either case our company's stability can't go on
17 a week to week basis, you know, with financing that may or
18 may not happen. And last week was dangerously close. And
19 we're hoping that we're able to liberate the process in
20 return to, kind of, a standard Chapter 11 approach while Your
21 Honor decides venue. And when Your Honor decides that that
22 will be where we'll end up.

23 THE COURT: Thank you. Does anyone else wish to be
24 heard on behalf of -- excuse me, to discuss scheduling of the
25 transfer motion?

1 MR. LOHAN: Yes, Your Honor. This is Brian Lohan.
2 I represent the controlling class, one of its members Barton
3 Hill, a name who's been tossed around, you know, on this
4 call, and in this matter.

5 We have proposed an alternative DIP. We were
6 pretty flexible during last Friday's hearing on the
7 structure. We believed that the -- you know, we don't need
8 to rehash everything that's been said, but we believe that
9 the Patriarch proposed DIP, essentially, tied the debtors'
10 hand on the stalking horse in a process, and we believe that
11 was directly in conflict with the settlement agreement that
12 we entered into in the Zohar bankruptcy cases.

13 And we did propose a junior DIP to try to, you
14 know, align with your ruling to Judge Mashburn to do what was
15 necessary to avoid immediate and irreparable harm, nothing
16 further. We tried to, you know, kind of bridge us to a
17 hearing on venue.

18 We've been working through the weekend to propose
19 that would take Ms. Tilton's ABL and eliminate some of the
20 obstacles that we ran into on Friday. But, most importantly,
21 would maintain maximum flexibility for an open and
22 transparent sale process including through a, you know, a
23 process where debtors could, you know, outside, you know, the
24 threat of an event of default the termination what a process
25 to identify a stalking horse bidder with maybe a little bit

1 more time.

2 And, you know, we think the venue issue should be
3 decided sooner rather than later because we're going into
4 Wednesday's hearing and, you know, wherever it's going to
5 take place, but presumably, at this point, Nashville, and you
6 know we have an order by Your Honor that says, you know,
7 Judge Mashburn can only do anything that's necessary to avoid
8 immediate and irreparable harm.

9 And, you know, as you've heard his call, our DIP
10 is going to have to take out Ms. Tilton's ABL. And what we
11 don't want -- we think that's good for the process. We think
12 that's good for the Dura debtors. We think that's good for
13 the debtors before Your Honor, but we don't want Judge
14 Mashburn to have a reservation given in light of the order.

15 Now, I think we can stall for that if that's an
16 issue after the hearing you on scheduling, but those are the
17 types -- and even in our DIP we're going to require the
18 debtors to file bid procedures not tied to a stalking horse,
19 but we believe a process should begin -- a marketing process
20 should begin immediately for this company. And, you know,
21 those things are going to have to take place whether it's the
22 Barton Hill DIP, which we hope its our DIP or its the
23 Patriarch DIP.

24 So on scheduling, I would urge Your Honor to
25 schedule the venue hearing sooner rather than later because a

1 lot will have to start happening in order for the case to be
2 successful.

3 THE COURT: Thank you.

4 Does anyone else wish to be heard in connection
5 with the scheduling of the venue motion?

6 UNIDENTIFIED SPEAKER: Yes, Your Honor. Okay.
7 I'll let Mr. Meisler go next.

8 MR. MEISLER: Yeah, Ron Meisler on behalf of the
9 proposed Dura DIP lender.

10 Your Honor, I just want to make clear, in
11 particular, that with respect to the characterization by Mr.
12 Barry, he said, and I will quote, the DIP loan is subject to
13 a monetization process.

14 Your Honor, I just want to be sure you're aware
15 that that's not correct. I'm sure it was inadvertent by Mr.
16 Barry, but Paragraph 8 of the settlement agreement makes it
17 clear that the financing that's subject to the monetization
18 process is one where it refinances the debtors' interest in a
19 portfolio company. DIP financing does not do that. And so,
20 the DIP financing is not subject to the monetization process.

21 I also want it to be clear too that there are a
22 few other points that I think Mr. Barry surely inadvertently
23 misstated. And that is that the "relief of Tilton." That's
24 not the case. That's overbroad and purposely obfuscates what
25 it does.

1 It's a typical provision of a DIP order that says
2 that the lender in its capacity as lender is released. We see
3 it all the time. It's just from the company to the lender.
4 It's a typical concession made by a borrower who's getting
5 consideration in the form of a loan from a lender. And so,
6 it solely releases that the lender in its capacity as lender
7 and it's Dura only.

8 So, I wanted to be clear on that there's not some
9 sort of overbroad massive relief of any and all claims by all
10 parties. It's just -- that's just not the case.

11 And then, finally, on the statement that it was
12 "non-consensual priming", that's really an issue for Judge
13 Mashburn. But to be sure in the intercreditor agreement what
14 we proposed was there's right down the middle of the
15 intercreditor agreement, they already agreed to it. It's
16 what's in the intercreditor agreement.

17 And so, Your Honor, I think those three points are
18 really important for you to keep in mind because, at least,
19 from our perspective, between now and November 12th, we just
20 don't even think it's an issue whatsoever with respect to any
21 sort of friction between whatever the settlement agreement
22 might say and what's happening in the Tennessee court.

23 Thank you, Your Honor.

24 THE COURT: Okay. Thank you.

25 MR. PERNICK: And, Your Honor, this is Norm

1 Pernick from Cole Schotz on behalf of the Patriarch
2 stakeholders and Lynn Tilton personally.

3 THE COURT: Yes, Mr. Pernick.

4 MR. PERNICK: Thank you, Your Honor.

5 I wanted to answer Your Honor's question about the
6 venue motion and, if I could, if you'll indulge me, there are
7 a couple of other comments in response left out from the
8 things that Mr. Barry indicated in his presentation.

9 First of all, we don't take a position on debtors'
10 venue motion other than we reserve the right to respond and,
11 of course, we will respond to the allegations that the
12 debtors made regarding Ms. Tilton's conduct in this regard,
13 including compliance with the court's order, but that's for
14 another day, but I wanted the court to know that we're not
15 going to take a position on the motion itself as to what the
16 merits are.

17 Second, as to the Dura debtors' request for relief
18 from the court's prior order on venue to authorize the
19 Tennessee Judge to enter a broader relief with respect to the
20 DIP financing and the stalking horse bid. We're also not
21 going to take a position on that.

22 I want to say a couple of things about or provide
23 the court with a little bit more flushing out of background
24 around some of the allegations that were stated.

25 First of all, Ms. Tilton has an obligation under

1 the settlement agreement and the court's ruling to
2 participate in a joint monetization process, but she also has
3 a duty as a fiduciary to Dura. So recognizing those various
4 interests, competing or even just appear as such, Ms. Tilton
5 did the right thing and she established an independent
6 process.

7 The company, Dura, hired two well-known, well
8 qualified independent directors and provided them with the
9 resources to hire competent legal and financial advisors.
10 The independent directors are making gains for the Dura
11 debtor, not Ms. Tilton.

12 She did the right thing in finding competent
13 directors to guide the company through this extraordinarily
14 challenging time. The independent directors exercised an
15 independent and informed judgment, cannot now be used against
16 her.

17 I want to emphasize that Ms. Tilton will comply
18 with the court's order requiring her to participate in a
19 joint monetization process. I'm sure that argument is for
20 another day, but I wanted to just reassure the court and the
21 parties on the phone about that.

22 Second, Ms. Tilton was well within the terms of
23 the settlement agreement to provide for the independent
24 directors and charge them with evaluating strategic
25 alternatives for Dura. As Mr. Bennett noted, Dura is an

1 independent breathing living company of its own. The filing
2 of Dura did not come as a surprise to the Zohar debtors as
3 Ms. Tilton shared with Mr. Katzenstein and Mr. Farnan on
4 several occasions the impossible position in which Dura has
5 been placed, operating with no expense and (indiscernible),
6 hundred plus million dollar loan facility and inability to
7 obtain a clean auditor as a result, while the creditor
8 (indiscernible). All these mounting issues were communicated
9 timely to the Zohar debtors' representatives.

10 Third, while it's not time to talk about the
11 stalking horse bid, Ms. Tilton purposely submitting the
12 stalking horse bid was to calm the trade of the employees.
13 And I'm not going to belabor this point because I thought Mr.
14 Bennett went through it pretty well and explained it to the
15 court, but that is the purpose.

16 Ms. Tilton is the CEO of this company. She's
17 charged with its well-being from an operational standpoint
18 and that is the purpose of, at least, here intent of the
19 stalking horse bid.

20 There is nothing inconsistent in the proposed DIP
21 financing and stalking horse bid with a joint process ordered
22 by the court. I'm sure we'll talk about that another day.
23 But the independent director and the CRO are not excluded
24 from the bid process. The DIP is not a refinancing under the
25 settlement agreement, as it doesn't serve to monetize the

1 Zohar.

2 The refinancing reference or refinancing of Dura's
3 debt. And so, I think it's important just -- I know the
4 court is being inundated with a lot of information that you
5 weren't necessarily aware of before and we thought it would
6 be helpful to you to, at least, hear the different party's
7 perspective on why certain actions were taken.

8 I appreciate your time.

9 THE COURT: Okay. Thank you, Mr. Pernick.

10 Is there anyone else who wishes to be heard in
11 connection with the scheduling of the venue motion and, if
12 not, I will allow Mr. Barry to have the last word?

13 MR. SHORE: Your Honor, this is Chris Shore from
14 White & Case on behalf of Mr. Farnan. May I be heard
15 quickly?

16 THE COURT: Yes, Mr. Shore.

17 MR. SHORE: All right. What Mr. Farnan would like
18 is, consistent with what the debtor said, a hearing on
19 Wednesday, if we can all have it and I'll talk about why I
20 don't think that is impossible, but, at least, as a setting -
21 - the court setting a clear set of conditions on how the
22 process is going to move forward in Tennessee if that's
23 what's going to happen.

24 But just a quick digression.

25 After we left you last time, and after we got your

1 ruling, the debtors proposed a process for monetizing the
2 companies. Ms. Tilton went in another direction on, perhaps,
3 a true color moment.

4 You know, Mr. Farnan came in after all the
5 prepetition, contacted the creditors, and he's listened to
6 her for years about the importance of the companies, the
7 importance of the employees, the importance of maximizing
8 value, getting past, what she's calling, noise about
9 conflicts and personal enrichment.

10 What went on last week is extremely troubling to
11 Mr. Farnan. Ms. Tilton had the honor of -- and let's be
12 clear about this, these are all single purpose entities in
13 which Ms. Tilton is the manager so whether we're calling it
14 Zohar, or Ark, or Patriarch, it is Ms. Tilton.

15 As the owner of Dura, you heard, she brought in
16 the independents. She was control over the company. She is
17 the CEO of Dura. Put forward a situation in which the
18 entities had to file in which she is proposed DIP lenders,
19 seeks to prime the Zohar debt that she put in place long
20 before this case started, before her using the intercreditor
21 rights as the ABL lender, that she acquired by acquiring the
22 ABL loans which she refused to allow to be taken out.

23 And as a DIP agent demand the sale process in
24 which she is perspective purchaser gets releases of all the
25 stalking horse protections. And she gets to remain in

1 continued control as CEO of Dura and is now conducting
2 business on behalf of Dura, all of which is leading to a
3 process in which there was no bones about it in Tennessee,
4 mainly even to a wipe out of her equity in C1, 2 and 3;
5 without all of that would have any input from the independent
6 director or the CRO.

7 From Mr. Farnan's perspective, this is an
8 untenable situation. First, and we got the position where
9 the company couldn't survive a weekend without access to
10 cash. What Mr. Farnan wants is, first, to avoid any more
11 harm to Dura. It is one of the biggest portfolio companies
12 that is and always has been a key to repayment in full of the
13 1, 2 and 3, and Zohar is the largest creditor of that entity.

14 So we are definitely invested in making sure that
15 moves forward in the process which can be to pay liquidity;
16 two, he wants to avoid the 1, 2 and 3 rights getting impaired
17 in a manner that cannot be fixed if the court ultimately
18 takes jurisdiction and; three, he wants to protect, in full,
19 to the fullest extent possible the court's jurisdiction.

20 Given what we've heard about where the liquidity
21 is and where Ms. Tilton is, you take the best path forward is
22 to have the hearing before the second interim. We had a meet
23 and confer over the weekend. The debtors said that they
24 could get papers in, and they did.

25 The parties agreed we didn't need discovery right

1 now to get this heard. And I'm not sure the affiliate issue
2 is such a big issue. It's either owned by Ms. Tilton or it's
3 owned by Z1, 2 and 3 that Ms. Tilton owns. The Dura and the
4 1, 2 and 3 are affiliates in light of the common ownership of
5 Ms. Tilton if Z1, 2 and 3 is a direct affiliate.

6 Now if the court either can't hear it or there are
7 issues that can't be done, the Judge was very clear in
8 Tennessee that he wants a clear set of guidelines along what
9 he can do and I think, in fairness, to your sister court,
10 there do need to be some things put in place, not just
11 listening to the parties today, some of this may not be that
12 controversial.

13 I don't think he should be approving a stalking
14 horse sale process as part of a financing. Financing is
15 okay, but putting a sale process attached to it, I'm sure
16 given the excellence of debtors' counsel and their advisors,
17 they can convince trade to stay onboard without a stalking
18 horse bidder being in place. There will be a process.

19 There shouldn't be any releases to implicate
20 estate assets of Z1, 2 and 3. And it maybe just clarifying
21 that the releases aren't going to anyway impinge upon Z1, 2
22 and 3 estate rights. There shouldn't be a good faith finding
23 that would prevent this court from finding that there was a
24 breach of the settlement agreement. We heard a lot about why
25 Tennessee is a fine venue.

1 But there's no reason why Ms. Tilton and the
2 advisors of Dura couldn't have come to Mr. Farnan as Dura was
3 required to do under the settlement agreement and had a
4 discussion about that in a joint monetization process in
5 every single thing that has happened to (indiscernible) Dura
6 and then without the input of Mr. Farnan or Mr. Katzenstein.

7 But there should be nothing in the ruling that the
8 court would have to make on an interim that would preclude
9 this court from finding that putting Dura into that process
10 constitutes a breach of the settlement agreement and reserves
11 the right to impose remedies on the signatories to the
12 settlement agreement if the court finds that that's a breach.

13 It doesn't sound like there's any reason why the
14 Tennessee court would have to kick jurisdiction over the
15 ownership issue. As Your Honor largely pointed out that
16 issue has been around this case for a long time, and we don't
17 need two courts asserting jurisdiction, both of whom under
18 the Bankruptcy Code would have exclusive jurisdiction over
19 the assets of the debtor.

20 And then, finally, I don't think there should be a
21 rollup of the ABL that, at least, at this stage in a way that
22 if it insulates Ms. Tilton's purchase of those loans. There
23 are issues that we need to look into there and those would be
24 estate claims of the 1, 2, 3 that we don't want insulated
25 with the rollup.

1 So, you know, just to go through that no rollup,
2 no stalking horse sale process tied to the financing, no
3 releases that implicate estate assets, no good faith finding
4 that would insulate a claim against the signatories in this
5 court for breach of the settlement agreement, and no taking
6 jurisdiction over the ownership issues.

7 And that's all I have, Your Honor.

8 THE COURT: Thank you.

9 MR. BENNETT: Judge, it's Ryan Bennett.

10 THE COURT: Yes, Mr. Bennett.

11 MR. BENNETT: On behalf of the Dura debtors.

12 Could I just correct a couple of things, or just comment on
13 that?

14 THE COURT: Sure.

15 MR. BENNETT: So, I was taken in the order that
16 was laid out, there are a lot of things that were imprecise
17 there in that rollout by Mr. Shore, but I think, first, like
18 with respect to Lynn knowing independents. Just so you're
19 aware of the process, the independent directors at Dura were
20 recommended by the company's advisors.

21 Now, Lynn, technically, had to officially appoint
22 them as the manager of Dura buyer, the non-debtor holdco, but
23 they were -- she did not know them, does not know them
24 personally, has never spoken with them. And these folks have
25 great records in the restructuring community and would not

1 sacrifice or risk those records to, you know, have some kind
2 of an inside line deal that I think was being intimated
3 there.

4 But, again, you know, folks keep mentioning how
5 Dura is a party to this settlement agreement. It's just not
6 true. We're our own company down below and that agreement
7 was with different stakeholders above us and different
8 entities and funds and stuff. We're an operating company and
9 not subject or party to that settlement agreement.

10 And, finally, on that ownership dispute, we're not
11 seeking to have -- to ask Judge Mashburn to decide that
12 ownership dispute. That's, again, above us and not between
13 us. And so, we're not looking to do that.

14 But everything else, I mean, with respect to
15 freeing him up to hear motions and requests for relief that
16 are in the best interest of the debtors' estate pursuant to
17 and not some special custom guidelines, but just the
18 standards of the Bankruptcy Code and case law.

19 You know that's what we'd like and that's what we
20 think is necessary. Again, we are an operating company with
21 a lot of fragility right now, and we need the ability to
22 realize the breathing space and protections afforded in the
23 Bankruptcy Code.

24 THE COURT: So, Mr. Bennett, how is my ruling any
25 different than what the bankruptcy rules provide for? It

1 says that the court is limited to entering what is necessary
2 to avoid immediate and irreparable harm to the debtors'
3 estates. Isn't that what is standard, Judge Mashburn's
4 standard is as we sit here today?

5 MR. BENNETT: Your Honor, Judge Mashburn's view,
6 as I believe was summarized by Mr. Barry, at the outset, was
7 that he could enter some relief but couldn't add additional,
8 I don't know, ancillary components to it. Right, so if, you
9 know, he could do a two-page term sheet, he felt comfortable
10 on an irreparable harm basis, but couldn't add additional
11 covenants and requirements to it because, you know -- and,
12 again, that's his -- that was his view.

13 I think now we're past the first day hearing. The
14 view of the imminent irreparable harm, you know, in addition
15 to just his own perspective, his own perception, right, but
16 also just the standards, I think we're best, at least from a
17 Dura standpoint, allowing ourselves to, you know, have access
18 to just the regular bankruptcy standards and burdens, and not
19 continue to layer on this particular requirement that has
20 caused him such pause and risk to, you know, our operating
21 profile.

22 THE COURT: Okay. Thank you.

23 MR. BENNETT: Thank you, Judge.

24 THE COURT: All right. Does anyone else wish to be
25 heard before I let Mr. Barry have the last word?

1 MR. MEISLER: Yes, Your Honor. This is Ron
2 Meisler, Skadden Arps, on behalf of the Dura DIP lender and
3 DIP agents.

4 There's various things that Mr. Shore mentioned
5 as, you know, you can't do this, you can't do that, you can't
6 do the other.

7 Your Honor, as far as the financing goes, as
8 mentioned in Paragraph 8 makes it clear that it's not the
9 monetization process, so Judge Mashburn's can't on what the
10 terms of the DIP should be should not be shackled.

11 We are not seeking a release beyond capacity as
12 lender, and that's from the borrower, so we're not seeking
13 releases from the Zohar estate. We're not doing things in
14 this DIP that tie the hands of this court with respect to the
15 settlement agreement.

16 But Mr. Shore (indiscernible) says you can't do a
17 rollup. This is an ABL. It's the way an ABL works. It
18 rolls over. It turns inventory into cash, inventory into AR
19 into cash -- it's the natural mechanics. And I personally
20 never seen an ABL that doesn't get rolled up.

21 With respect to, you know, the good faith finding,
22 well we're a DIP lender. We need the 364(e) finding. No
23 party on the planet would loan money to a Chapter 11 debtor
24 without that 364(e) finding.

25 And so, there are certain elements that Mr. Shore

1 is demanding that are simply out of place and shouldn't be
2 comments by this court. We do understand that this court
3 could take the matter up on a venue transfer motion on or
4 prior to November 12th and that's okay with us. We really
5 think the rubber hits the road on the November 12th bid
6 procedures hearing.

7 Again, we think it's straight down the middle that
8 what we did is absolutely okay and within the confines of the
9 settlement agreement. But in between now and then, Your
10 Honor, we do have an investment in this, and so we would like
11 to see the Dura debtors can take the liquidity that we're
12 operating and run a value maximizing process as the
13 settlement agreement states, its acknowledged that the CRO,
14 and I'm quoting Paragraph 10, it is acknowledged that the CRO
15 will act in the best interest of the Zohar funds and Tilton
16 in the best interest of the Group A portfolio companies.
17 Dura is one of those portfolio companies.

18 We are trying to act in the best interest of Dura.
19 We're trying to maximize value. And, Your Honor, quite
20 honestly, Mr. Shore and his clients and Zohar estate they're
21 only worried about their term loan. And so, they have a very
22 parochial interest and it just -- it doesn't belong in our
23 DIP order, so we're not trying their hands as to whatever it
24 is that they believe is going on in the settlement agreement.

25 Thanks, Your Honor.

1 THE COURT: Okay. Thank you.

2 MR. LOHAN: Your Honor.

3 THE COURT: Yes.

4 MR. LOHAN: I know Your Honor wants to get to Mr.
5 Barry, but may I be heard for just one second. This is Brian
6 Lohan on behalf of Barton Hill.

7 THE COURT: Sure.

8 MR. LOHAN: I don't know how Mr. Meisler can say
9 that the DIP it's not part of monetization when the DIP
10 expressly tied its existence to the existence of a sale
11 process for the company that doesn't contemplate a joint sale
12 process.

13 It's all one and the same. It's really hard to
14 say a loan is a financing that's separate from the sale
15 process. They're all intertwined. And we think that's just
16 inappropriate and it's too far in light of the settlement
17 agreement. That's all.

18 THE COURT: Okay. Thank you. Okay.

19 MR. MEISLER: Excuse me, Your Honor. Ron Meisler,
20 Skadden Arps.

21 It's not the DIP loan. (Indiscernible) that is
22 clearly, by the way, so that the company can implement
23 whatever it needs to implement to maximize value.

24 What Mr. Lohan is confusing is the bid procedures.
25 The bid procedures are mechanics for how the Dura debtors are

1 going to go about marketing the business and implementing a
2 sale. So that distinction is extremely important. And while
3 it is the debtors' bid procedures, it's the debtors' bid
4 process. And we want to be sure that it's one that maximizes
5 value. We want to be sure it's one that pays our DIP and
6 pays our ABL.

7 We will cheer if there is a better bid. We want
8 better bids. We would love -- we're a beneficiary also
9 because, yes, we have an equity interest in Dura and we hope
10 that all the debt gets paid off and there's valuable that
11 rolls up to the equity. That would be fantastic, but, Your
12 Honor, it's critically important that nobody confuse a DIP
13 loan and a sale process.

14 Thank you, Your Honor.

15 THE COURT: Okay.

16 MR. BARRY: Your Honor, it's Joe Barry. I got to
17 chime in or I guess or I'm never going to get heard.

18 THE COURT: Go ahead, Mr. Barry.

19 MR. BARRY: Thank you, Your Honor. A couple of
20 points.

21 First, I think to address Mr. Meisler's sort of
22 nothing to see here attitude, I'll give you a simple example
23 as to why there very much is something to see here.

24 There's clearly a dispute under the settlement
25 agreement whether or not what's being proposed here is a

1 monetization event or not. First of all, Mr. Meisler
2 contends that the financing is not but he hasn't addressed
3 how the sale is not. But, more importantly, there is a
4 dispute as to whether or not, at least, the financing is a
5 monetization event under the settlement agreement.

6 If Judge Mashburn gives the DIP lender, the DIP
7 lenders who is a signatory to the settlement agreement -- if
8 Judge Mashburn gives Ark a good faith finding on that debt,
9 on that DIP loan, how then can we come back -- they're going
10 to come back to Your Honor and say, Judge, even if we breach
11 the settlement agreement, we got a finding in Tennessee that
12 says us doing so within good faith.

13 So, I'm not going to make our argument here,
14 Judge, but just to address, again, the nothing to see here
15 view expressed by Mr. Meisler, there's just one small example
16 as to why this is much more complicated than just an ordinary
17 everyday DIP.

18 Another thing --

19 UNIDENTIFIED SPEAKER: (indiscernible).

20 THE COURT: Go ahead, Mr. Barry.

21 MR. BARRY: Thank you.

22 There was a reference that the determination of
23 what goes in and what comes out of the DIP should be within
24 Judge Mashburn's purview. Well that may be true if Zohar's
25 weren't being primed, but, again, there's the jurisdictional

1 defect allowing Judge Mashburn to allow the priming of the
2 Zohar's liens and debt claims because, again, that's the
3 exclusive jurisdiction of Your Honor under 28 U.S.C. 1334.
4 So, again, this is not an ordinary everyday restructuring
5 situation where there's nothing to see.

6 Third, we get that Mr. Bennett needs and wants --
7 desperately needed financing, and we support them getting
8 that financing. The problem is the terms of those financing
9 are being controlled by Ms. Tilton and the Ark entity. So,
10 it's not that we oppose them getting the funding at all.
11 It's that they're doing tremendous violence to the value of
12 the Zohar estates in doing it.

13 Finally, Your Honor, our view on -- this is a
14 scheduling conference. Our view is that Judge Mashburn
15 should be permitted to do what he needs to do but only to the
16 extent it doesn't violate Zohar's rights, impair our claims
17 or, otherwise, do injustice to what's pending before Your
18 Honor including the monetization process and including 1334.

19 So, we're not looking for you to shackle Judge
20 Mashburn. To the extent he can be freed up that's fine, but
21 I think we all need to keep in mind the thing that's really
22 shackling him are the terms of the DIP. It's not anything
23 Your Honor has done.

24 THE COURT: Okay. Thank you very much.

25 I have been given a lot to think about. And I

1 understand we need a prompt ruling, but I need a little bit
2 of time to think about if I need to modify the terms of my
3 order, so here's what I'd like to do.

4 I'd like to reconvene and at 4:15, if we can all
5 reconvene via CourtCall and, at that point, we'll address the
6 matters before the court. Okay. So, we're going to take a
7 brief break, and I will be back online at 4:15. Thank you.

8 (Recess at 3:21 p.m.)

9 (Proceedings resumed at 4:20 p.m.)

10 THE COURT: Good afternoon, counsel. This is
11 Judge Owens. Thank you very much for affording me a few
12 moments to collect my thoughts after the presentation about
13 an hour ago.

14 So, here is what I would like to do:

15 First, the court intends to hold a hearing on the
16 debtor's venue motion on Friday, November 1st at 9:30 a.m. I
17 would like the parties to meet and confer regarding an
18 appropriate briefing schedule, but I'd like replies filed no
19 later than end of the day Tuesday. A certification of
20 counsel with an order approving the agreed upon briefing
21 schedule should be filed and submitted by this Wednesday.

22 Second, the parties today have asked this court to
23 make significant rulings with respect to the DIP financing
24 motion that will be before Judge Mashburn this week, and to
25 modify the order it entered last week regarding the relief

1 Judge Mashburn may enter in the Dura cases; however, I
2 decline to do so.

3 The parties have attempted to summarize the DIP
4 relief sought, but as we all know the devil is in the
5 details. What I have heard, however, is extremely troubling
6 and I will not be inclined to readily approve such relief;
7 nonetheless, that is for Judge Mashburn to decide. My order
8 is consistent with Rule 6003, 4001, and 1014, and it will
9 stand as written.

10 I will simply note that any order that is to be
11 entered by Judge Mashburn on Wednesday is an interim order
12 and under the bankruptcy rules and our local rules that
13 relief can be re-visited at a final hearing by the court with
14 jurisdiction at that time.

15 Thank you. I will look for the certification of
16 counsel on Wednesday.

17 We will stand adjourned. Thank you.

18 (Proceedings concluded at 4:25 p.m.)

19 CERTIFICATE

20
21 I certify that the foregoing is a correct transcript from the
22 electronic sound recording of the proceedings in the above-
23 entitled matter.

24 /s/Mary Zajackowski
25 Mary Zajackowski, CET**D-531

October 22, 2019